

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 JIMMIE L. DOSS, JR.,

Case No.: C 14-0778 CW (PR)

5 Plaintiff,

ORDER OF DISMISSAL

6 v.

7 LORI CURRAN, et al.,

8 Defendants.  
\_\_\_\_\_

9  
10 INTRODUCTION

11 Plaintiff, a state prisoner incarcerated at the California  
12 State Prison in Sacramento (CSP), has filed a pro se civil rights  
13 action pursuant to 42 U.S.C. § 1983, seeking damages and  
14 injunctive relief for alleged constitutional violations that  
15 resulted in his criminal conviction. Plaintiff has filed a motion  
16 to proceed in forma pauperis, which is granted in a separate  
order.

17 DISCUSSION

18 I. Standard of Review

19 A federal court must conduct a preliminary screening in any  
20 case in which a prisoner seeks redress from a governmental entity  
21 or officer or employee of a governmental entity. 28 U.S.C.  
22 § 1915A(a). In its review, the court must identify any cognizable  
23 claims and dismiss any claims that are frivolous, malicious, fail  
24 to state a claim upon which relief may be granted or seek monetary  
25 relief from a defendant who is immune from such relief. Id.  
26 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
27 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
28 1988).

1       To state a claim under 42 U.S.C. § 1983, a plaintiff must  
2 allege two essential elements: (1) that a right secured by the  
3 Constitution or laws of the United States was violated, and  
4 (2) that the alleged violation was committed by a person acting  
5 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
6 (1988).

7       II. Plaintiff's Claims

8       Plaintiff alleges that Defendants Richmond Police Officer  
9 Lori Curran, Juvenile Probation Officer Miguel Chavez, Richmond  
10 Sheriff David Livingston, the Contra Costa County Sheriff's  
11 Department and the Richmond Police Department violated his  
12 constitutional rights by issuing an illegal warrant against him,  
13 illegally arresting him and falsely imprisoning him from January  
14 1, 2010 to January 27, 2010. This "illegal detention" led to the  
15 charges for which Plaintiff is now in prison. Comp. at 6; Ex. B,  
16 Jan. 25, 2012 Motion to Dismiss Criminal Charges Against Plaintiff  
17 (arguing for dismissal of present charges against Plaintiff due to  
18 previous illegal detention). Plaintiff alleges that Defendant  
19 Christopher Martin, his defense counsel, provided deficient  
20 representation by failing to argue for Plaintiff's release from  
21 detention based on false imprisonment and a speedy trial  
22 violation. Plaintiff seeks money damages from each Defendant.

23       Plaintiff's claims are barred by Heck v. Humphrey, 512 U.S.  
24 477, 486-87 (1994). The United States Supreme Court has held that  
25 to recover damages in a suit under § 1983 for an allegedly  
26 unconstitutional conviction or imprisonment, or for other harm  
27 caused by actions whose unlawfulness would render a conviction or  
28 sentence invalid, a plaintiff must prove that the conviction or

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1 sentence has been reversed on direct appeal, expunged by executive  
2 order, declared invalid by a state tribunal authorized to make  
3 such determination, or called into question by a federal court's  
4 issuance of a writ of habeas corpus. Id. A claim for damages  
5 arising from a conviction or sentence that has not been so  
6 invalidated is not cognizable under § 1983. Id.

7 If Plaintiff's claims that Defendants violated his constitutional  
8 rights by issuing an illegal warrant, illegally arresting him and  
9 falsely imprisoning him are proven true, this would imply the  
10 invalidity of his conviction. Because Plaintiff is presently an  
11 inmate at CSP, it is clear the conviction has yet to be  
12 invalidated. Until then, the claims are barred by Heck. See  
13 Guerrero v. Gates, 442 F.3d 697, 703 (9th Cir. 2006) (Heck barred  
14 plaintiff's claims of wrongful arrest, malicious prosecution, and  
15 conspiracy among police officers to bring false charges against  
16 him). Plaintiff's claim for ineffective assistance of counsel is  
17 also barred by Heck because success on it would call into question  
18 the validity of Plaintiff's conviction that is now in place.

19 A petition for a writ of habeas corpus is the exclusive  
20 method by which a person may challenge in this court the fact or  
21 duration of his confinement. See Preiser v. Rodriguez, 411 U.S.  
22 475, 500 (1973). Before he may file a federal petition, however,  
23 Plaintiff must exhaust state judicial remedies, either on direct  
24 appeal or through collateral proceedings, by presenting the  
25 highest state court available with a fair opportunity to rule on  
26 the merits of each and every issue he seeks to raise in federal  
27 court. See 28 U.S.C. § 2254(b)(1)(A),(c); Duckworth v. Serrano,  
28 454 U.S. 1, 3 (1981).

1 CONCLUSION

2 For the foregoing reasons, this action is DISMISSED. This  
3 dismissal is without prejudice to Plaintiff filing a new action if  
4 his criminal conviction is set aside. The Clerk shall close the  
5 file.

6 IT IS SO ORDERED.

7 Dated: 3/18/2014



8 CLAUDIA WILKEN  
9 UNITED STATES DISTRICT JUDGE